

IN THE MATTER OF THE
WORKERS' COMPENSATION
INSURANCE POLICY ISSUED
TO PAYROLL SOLUTIONS
MANAGEMENT GROUP LLC BY
LIBERTY MUTUAL INSURANCE
CO. POLICY:

HEARING NO. 09-HR-0381

Mr. Richard Trzupek, CEO
Payroll Solutions Management Group, LLC
2950 Niles Ave.
St. Joseph, Michigan 49085-2418

Liberty Mutual Insurance Co.
c/o Mr. Paul Holtrup
11611 N. Meridian, Suite 500
Carmel, Indiana 46032

ORDER

I, Michael T. McRaith, Director of the Illinois Department of Insurance, hereby certify that I have read the Record in this matter and the hereto attached Findings of Fact, Conclusions of Law and Recommendations of the Hearing Officer, Louis Butler, appointed and designated pursuant to Section 402 of the Illinois Insurance Code (215 ILCS 5/402) to conduct a Hearing in the above-captioned matter. I have carefully considered and reviewed the Record of the Hearing and the Findings of Fact, Conclusions of Law and Recommendations of the Hearing Officer attached hereto and made apart hereof.

I, Michael T. McRaith, Director of the Illinois Department of Insurance, being duly advised in the premises, do hereby adopt the Findings of Fact, Conclusions of Law and Recommendations of the Hearing Officer as my own, and based upon said Findings, Conclusions and Recommendations enter the following Order under the authority granted to me by Article XXIV and Article XXXI of the Illinois Insurance Code (215 ILCS 5/401 et. seq. and 215 ILCS 5/500-5 et. seq.) and Article X of the Illinois Administrative Procedure Act(5 ILCS 100/10-5 et. seq.).


This Order is a Final Decision pursuant to the Illinois Administrative Procedure Act (5 ILCS 100/1 et. seq.). Parties to the proceeding may petition the Director of Insurance for a Rehearing or to Reopen the Hearing pursuant to 50 Ill. Adm. Code 2402.280. Appeal of this Order is governed by the Illinois Administrative Review Law (735 ILCS 5/3-101 et. seq.).

NOW IT IS THEREFORE ORDERED THAT:

- 1) Liberty's inclusion of employees leased to Four Seasons in determining premiums owed by Payroll is proper; and
- 2) That Payroll and Liberty be equally assessed the \$314.70 (\$157.35 each) cost of this proceeding payable within 35 days from the date of this order directly to the Illinois Department of Insurance, 320 West Washington Street, Springfield, Illinois 62767.

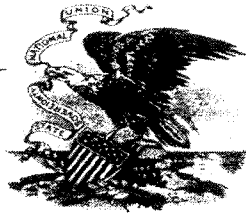
DEPARTMENT OF INSURANCE of the
State of Illinois;

Date: 1 July 2010


Michael T. McRaith
Director

STATE OF ILLINOIS

DEPARTMENT OF INSURANCE



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FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATIONS OF THE HEARING OFFICER

Now comes Louis Butler, Hearing Officer in the above-captioned matter and offers his Findings of Fact, Conclusions of Law and Recommendations to the Illinois Director of Insurance.

FINDINGS OF FACT

- 1) On February 26, 2009, the Illinois Workers' Compensation Appeals Board (Board) issued a case summary and decision in the matter of the workers' compensation insurance policy issued to the Complainant, Payroll Solutions Management Group LLC (Payroll or PSMG), by the Respondent, Liberty

Mutual Insurance Co. (Liberty), policy # WC7-34S-504284-017. (Hearing Officer Exhibit # 2B).

- 2) The Board declined to make a determination in this case stating that it lacked jurisdiction because the matter required an interpretation of Illinois state laws or regulations.
- 3) On March 17, 2009, the Illinois Department of Insurance (Department) received, from Payroll, a Request for a Hearing based on the decision of the Board. (Hearing Officer Exhibit # 2A).
- 4) On June 9, 2009, the Director issued an Authority to Conduct Hearing appointing Louis Butler as Hearing Officer in this proceeding. (Hearing Officer Exhibit # 1).
- 5) On June 9, 2009, the Director issued a Notice of Hearing in this matter, pursuant to Payroll's request, setting a Hearing date, time and location of July 15, 2009, at 10:00 a.m., at the Department's Offices in Chicago, Illinois. (Hearing Officer Exhibit # 2).
- 6) The Notice of Hearing states, pursuant to 50 Ill. Adm. Code 2402.270, that the Director may order that the costs of this proceeding be assessed against the parties. (Hearing Officer Exhibit # 2).
- 7) On July 13, 2009, the Department received, from James T. Barnes, a Notice of Appearance on behalf of Liberty. (Hearing Officer Exhibit # 3).
- 8) On July 13, 2009, the Department received, from Mr. Barnes, a Motion for Continuance. (Hearing Officer Exhibit # 4).
- 9) On August 4, 2009, the Hearing Officer issued an Order setting a prehearing telephone conference for August 13, 2009 at 10:00 a.m. to schedule a new date for the hearing. (Hearing Officer Exhibit # 5).
- 10) On August 14, 2009, the Hearing Officer issued an Order setting a new hearing date, time, and location for October 14, 2009 at 10:00 a.m. at the Department's offices in Chicago, Illinois. (Hearing Officer Exhibit # 6).
- 11) On October 14, 2009, the Hearing in this matter was convened at approximately 10:02 a.m. at the Department's Offices in Chicago, Illinois at which time were present Louis Butler, Hearing Officer; Richard Trzupsek, appeared pro se on behalf of Payroll; James T. Barnes appeared as counsel on behalf of Liberty; Paul Holtrup and Becky Antcliff appeared as witnesses for Liberty but did not testify. Ms. Helen Kim and Ms. Simone Arthur of the Department were present but did not participate in the hearing.

- 12) The purpose of this proceeding was to determine whether Liberty correctly applied the workers' compensation rating system to the business activities of Payroll. Specifically, the issue is whether Payroll was entitled to split coverage for workers' compensation insurance between its clients. In this case, Payroll argued that its client, Four Seasons, should be excluded in calculating premiums due to Liberty for Payroll's worker's compensation coverage.
- 13) Mr. Trzupsek, the representative for Payroll, after being duly sworn, testified for the record as follows:
- a. Three documents were entered into evidence by Mr. Trzupsek:
 - i. PSMG Exhibit # 1 is a professional employer organization arrangement (PEO) service agreement between Payroll and Four Seasons titled, "Payroll Solution Management Group, LLC." Mr. Trzupsek signed the agreement and dated it October 1, 2007. The client signed the agreement but did not date it.
 - ii. PSMG Exhibit # 2 is a copy of an email that Mr. Trzupsek sent to Tim Hughes¹ on December 17, 2008 regarding Four Seasons.²
 - iii. PSMG Exhibit # 3 is a workers' compensation and employer's liability policy from State Auto Insurance Company.
 - b. Mr. Trzupsek stated that he has done this before [split coverage]. He believes that when he owned Administrative Employer Group (AEG)³ approximately 26 or [27] other clients had their own policies issued through the insurer American International Group, Inc. (AIG). He testified that during that period Liberty excluded some clients, including Four Seasons, from their audit.
 - c. Mr. Trzupsek presented a certificate of insurance for Four Seasons to Liberty when the first audit came in. At that time, Four Seasons seemed like they were excluded but then the auditor from Liberty came back and said they were not excluded.
 - d. Mr. Trzupsek testified that Four Seasons was definitely covered under Four Seasons' own policy.

¹ Based on the address line of the e-mail, it appears that Tim Hughes is somehow affiliated with NCCI.

² The e-mail is an explanation of Payroll's position from Mr. Trzupsek to Mr. Hughes. Neither the copy of the e-mail nor the testimony at the Hearing indicate what response, if any, Mr. Hughes had to this communication.

³ Mr. Trzupsek owned the company AEG prior to Payroll. The Liberty policy that he is referring to where split coverage was "allowed" was for policy period 11/20/2003 to 11/20/2004. The policy there was between AEG and Liberty not between Payroll and Liberty.

- e. Mr. Trzupek objected to the inclusion of Four Seasons because in the past they had been able to exclude them.⁴
- f. He emphasized that Four Seasons was covered under its own policy issued by State Auto Insurance Company. Four Seasons' claims were turned in and premiums were paid under that policy. All claims accepted during that period are being handled by that insurance carrier (not Liberty).
- g. To explain why multiple contracts may exist between Four Seasons and Payroll, Mr. Trzupek testified that Four Seasons was supposed to be an Administrative Outsourcing Services (ASO) but on the day they were to sign the contract Four Seasons decided to be a PEO. As an ASO, Payroll would do all of Four Seasons outsourcing of payroll under their [Four Seasons] federal ID number and handle all of their HR (human resources). Mr. Trzupek stated that, as an ASO, Four Seasons would have been responsible for their own workers' compensation.

14) On cross examination by Mr. Barnes, Mr. Trzupek testified as follows:

- a. The original agreement between Four Seasons and payroll was intended to be an ASO agreement. However, the ASO agreement was voided on the same day it was entered and a PEO service agreement was executed in its place. (PSMG Exhibit # 1).
- b. Mr. Trzupek stated, Four Seasons became a client and the PEO contract was entered on October 1, 2007.
- c. The workers' compensation policy at issue (between Liberty and Payroll) was entered on January 30, 2007.
- d. The policy between Liberty and Payroll had already expired by the time Payroll presented the Four Seasons' certificate of insurance to Liberty.
- e. At the time of coverage, Payroll was a Nevada corporation located in Indiana. During the policy period all of Payroll's clients were in Illinois. Mr. Trzupek stated that his wife, Irene Trzupek, who is one of the owners of Payroll⁵, decided to incorporate in Nevada. He does not believe that there were any particular reasons for her choice.
- f. Mr. Trzupek agreed with Mr. Barnes' statement that Liberty was not informed that Four Seasons was a client of Payroll during the policy

⁴ When Mr. Trzupek says that in the past he was allowed to split coverage he is referring to 2004. In his brief, Mr. Trzupek writes (on page 3) that Four Seasons had grown from a company of about 30 employees in 2004 to a company of over 300 in 2007.

⁵ The other owner of Payroll is Cindy Gluchowski. Mr. Trzupek is not one of the owners.

period; the reason being, Mr. Trzupsek stated, was that Four Seasons had their own workers' compensation policy.

- g. Liberty did not know about Four Seasons until after the policy period had expired because neither a certificate of insurance nor a copy of a client service agreement was sent to them.
- h. Mr. Trzupsek owned another PEO, called Administrative Employer Group (AEG), which was covered by Liberty. Mr. Trzupsek testified that he split coverage during that time and thinks that because he did it then he should be allowed to do it now.⁶ AEG is not connected to this hearing.
- i. Initially, Mr. Trzupsek affirmed that Four Season had its own workers and that they also leased workers from Payroll. Later, Mr. Trzupsek agreed that all of the people who worked for Four Seasons were included under Payroll's federal ID number and were Payroll's W-2 employees.⁷
- j. Mr. Trzupsek testified that Payroll provided Four Seasons with a payroll which distinguished clerical, installers, and sales people; this allowed Four Seasons to know what payroll to provide to their insurer (State Auto Insurance) for the purpose of calculating premium due for workers leased from Payroll.
- k. Once he gave the payroll information to Four Seasons, Mr. Trzupsek did not know with absolute certainty whether they forwarded the payroll information to their insurance carrier (State Auto Insurance).
- l. Mr. Trzupsek defined split coverage as, "The client can be on one [policy], and the PEO could be on another."⁸
- m. Mr. Trzupsek agreed that the January 2007 policy (WC7-34S-504284-017), at issue here, was renewed by a second policy, (WC7-34S-504284-018) in January 2008; and premiums are owed. Nevertheless, in his testimony he disputed the amount owed. Mr. Barnes proclaimed that \$58,000 is still owed and Mr. Trzupsek countered that he believed it was approximately \$8,600.

⁶ Based on information presented in the Hearing it is unclear whether Liberty was aware that Mr. Trzupsek was split coverage during this time or if it was simply overlooked during the audits. No information regarding the specific conditions of this earlier policy were provided at the hearing if Liberty did in fact knowingly permit split coverage.

⁷ Hearing Officer's Exhibit # 2 under the heading "Executive Session and Board Ruling" states, "A board member questioned that because PSMG paid the workers leased to Four Seasons, how did Four Seasons' insurance carrier know what payroll to base its premium on for these leased workers?"

⁸ Mr. Barnes' asked Mr. Trzupsek (R. 27) if he is aware of a law recently passed in Michigan which he says states that in PEO relationships that coverage follows the W-2 employer always. Mr. Barnes' also included a copy of Michigan Circular Letter #189 in Exhibit D of his brief.

- n. Mr. Truzupek arrived at the \$8,600 figure because he excluded Four Seasons. He testified that Liberty will combine both policies amounts when they send him a bill; also, he stated that he received quotes of varying dollar amounts from Liberty through their dealings.
- 15) On examination by the Hearing Officer, Mr. Truzupek testified as follows:
- a. There was more than one audit conducted by Liberty. The first audit was performed in 2008; during that time Four Seasons was not a client of PSMG. Four Seasons was only a client of PMSG for three payrolls from October 1, 2007 to the middle of November.
 - b. Mr. Truzupek's former business, AEG, was sold in 2004; his wife was not an owner in that business. He owned AEG for approximately four years between 2000 and 2004. Four Seasons was his client during this time. Prior to AEG, he owned Staff Leasing, which was founded in 1991. Four Seasons had been a client of his since 1991.
 - c. Four Seasons was reported under their own policy during the time they were Mr. Truzupek's client. Mr. Truzupek testified that when he owned AEG he had many different insurers and could not recall if Liberty had ever been one of them. He did recall that Fireman's Fund, Crum & Foster (which was a captive for Waterford Insurance and operated in a voluntary market) had been one of his insurers.
- 16) Amicus Court Reporters, Inc. recorded the testimony taken in this proceeding and charged the Department \$314.70 for the Court Reporter's attendance and a copy of the proceedings.

CONCLUSIONS OF LAW

Based upon the above stated Findings of Fact and the Record in this matter the Hearing Officer offers the following Conclusions of Law to the Director of Insurance:

Louis Butler was duly appointed Hearing Officer in this matter pursuant to Section 402 and 403 of the Illinois Insurance Code (215 ILCS 5/402 and 403).

The Director of Insurance has jurisdiction over the subject matter and the parties in this proceeding pursuant to 5/401, 5/402, 5/403 and 5/462 of the Illinois Insurance Code (215 ILCS 5/401, 5/402, 5/403 and 5/462).

This matter comes to the Director of Insurance as a request for a Hearing made by Payroll, pursuant to Section 462 of the Illinois Insurance Code (215 ILCS 5/462). Specifically, the dispute centers on Liberty's application of a workers' compensation rating system to the business activities of Payroll. The issue is whether the premium charged by the Liberty for Payroll's Workers' Compensation Insurance Policy # WC7-

34S-504284-017, for policy period 1/30/2007 through 1/30/2008, was proper based on a determination by Liberty that the policy provided coverage for all of Payroll's employees. It is undisputed that the workers leased to Four Seasons by Payroll were employees of Payroll.

Section 462 of the Illinois Insurance Code (215 ILCS 5/462) provides, in part:

“Every rating organization, and every company which does not adopt the rates of a rating organization, shall provide within this state reasonable means whereby any person aggrieved by the application of its rating system may be heard, in person or by his authorized representative, on his written request to review the manner in which such rating system has been applied in connection with the insurance afforded him. If the rating organization or company fails to grant or reject such request within thirty days after it is made, the applicant may proceed in the same manner as if his application had been rejected. Any party affected by the action of such rating organization or such company on such request may, within thirty days after written notice of such action, appeal to the Director, who, after a hearing held upon not less than ten days' written notice to the appellant and to such rating organization or company, may affirm or reverse such action.”

The evidence presented in this matter indicated that Payroll was issued a workers' compensation and employers' liability policy (policy # WC7-34S-504284-017) by Liberty for policy period 1/30/2007 through 1/3/2008. The policy provided workers' compensation coverage for the employees of Payroll. Payroll is an employee leasing company otherwise known as a PEO (Professional Employer Organization). Generally, an employee leasing company (Payroll) “leases” employees to a client company (Four Seasons); serves as the W-2 employer of the leased employees, and performs other employer responsibilities as to those leased employees.

At the end of policy period 1/30/2007 through 1/30/2008, Liberty performed an audit of the Payroll's operations. Liberty found that in addition to those clients listed on the policy, Payroll was also leasing employees to Four Seasons. Accordingly, Liberty charged the Payroll premiums for those employees leased to Four Seasons. Payroll argued that it should not have to pay premiums for employees leased to Four Seasons because Four Seasons had a workers' compensation policy of its own that covered those employees. Additionally, Payroll argued that it had excluded clients from its workers' compensation policies in the past and had never been told it could not do so.

820 ILCS 305/1 (a)(2) and (b)(2) provides, in pertinent part:

Workers' Compensation Act.

(a) The term “employer” as used in this Act means:

* * *

2. Every person, firm, public or private corporation...who has any person in service or under any contract for hire, express or implied, oral or written, and who is engaged in any of the enterprises or businesses enumerated in Section 3 of this Act...

* * *

(b) The term “employee” as used in this Act means:

2. Every person in the service of another under any contract of hire, express or implied, oral or written...(Emphasis added).

215 ILCS 113 Employee Leasing Company Act states in pertinent part:

Sec 5. Purpose. For the purpose of ensuring that an employer that leases some or all of its workers properly obtains workers’ compensation insurance coverage for all of its employees, including those leased from another entity, and that premium is paid commensurate with exposure and anticipated claim experience, this Act is required to regulate employee leasing companies. (Emphasis added).

* * *

Sec. 15. Definitions. In this Act:

“Employee leasing arrangement” means a contractual arrangement, including long-term temporary arrangements whereby a lessor⁹ obligates itself to perform specified employer responsibilities as to leased employees including the securing of workers’ compensation insurance. (Emphasis added).

Payroll does not dispute that it entered into an employee leasing arrangement, as defined by 215 ILCS 113/15, with Four Seasons. The Employee Leasing Company Act states that its purpose is to ensure that employers obtain workers’ compensation insurance coverage for all employees and that premiums are paid based on exposure. Based on 215 ILCS 113/5, Payroll is responsible for insuring all of its leased employees. Payroll was

⁹ 215 ILCS 113/15 also defines “Lessor” as an “employee leasing company” which means an entity that leases any of its workers to a lessee through an employee leasing arrangement.

the employer of the employees leased to Four Seasons. So even if Four Seasons carried workers' compensation insurance an injured employee leased to Four Seasons that was employed by Payroll could have brought a successful claim under the policy that was issued to Payroll by Liberty. Therefore, Liberty's calculation of premiums based on the inclusion of all employees that Payroll leased is proper because Liberty bore the risk of having to pay any potential claims of those workers.

Payroll argues that split coverage should be allowed because of previous dealings with Liberty. Between 11/20/2003 and 11/20/2004, Mr. Truzupek owned another PEO called Administrative Employer Group (AEG) that was insured by Liberty. At that time, Four Seasons leased approximately 30 employees from AEG. Between 1/30/2007 and 1/30/2008, Four Seasons leased approximately 300 employees from Payroll. Payroll's belief that an insurance policy issued to one company should be governed by a policy issued to a different company is in error. Furthermore, between policy period 1/30/2007 and 1/30/2008, Liberty was unaware that Four Seasons was a client of Payroll so Liberty could not knowingly approve of Payroll splitting coverage.

RECOMMENDATIONS

Based upon the above stated Findings of Fact, Conclusions of Law and the Record in this matter the Hearing Officer offers the following Recommendations to the Director of Insurance:

- 1) That the Department agrees that Liberty was justified in including Payroll employees leased to Four Seasons in determining premiums owed; and
- 2) That Payroll and Liberty be equally assessed the \$314.70 cost of this proceeding.

Respectfully submitted,

Date:

January 8, 2010

Louis Butler

Louis Butler
Hearing Officer